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COMMONWEALTH OF MASSACHUSETTS
OF TELECOMMUNICATIONS AND ENERGY

DEPARTMENT

)
Bell Atlantic-Massachusetts Tariff No.)
17 Digital Subscriber Line Compliance Filing)
98-57, Phase III
and Line Sharing Filing)

D. T. E.

RHYTHMS LINKS INC. REGARDING
ATLANTIC-MASSACHUSETTS' TARIFF NO. 17
SUBSCRIBER LINE COMPLIANCE FILING
AND LINE SHARING FILING

COMMENTS OF
BELL
DIGITAL

I. INTRODUCTION

On May 5, 2000, Bell-Atlantic Massachusetts ("BAMA") filed with the Department for effect June 4, 2000, a compliance tariff regarding Digital Subscriber Line ("xDSL") services, as required under the Department's March 24, 2000 Decision and Order in D.T.E. 98-57("Tariff 17 Order"). In this same compliance filing, BAMA included a proposed line sharing offering to transmit DSL-based services over the same loops by which BAMA provides voice services to its customers. The tremendous consumer benefit of this arrangement cannot be overstated. Consumers can receive high-speed, high-capacity data and Internet access without waiting for the incumbent local exchange carrier ("ILEC") to install a separate loop dedicated to data services. Moreover, line sharing allows consumers to retain their desired local service provider while enjoying the benefits of competitively provided data services, all over a single loop. Line sharing thus truly provides the type of technological convergence that Congress envisioned in the 1996 Act. ILECs, including BAMA, have been providing their own retail DSL services solely via line sharing arrangements for more than a year, while refusing to make this functionality available to CLECs. In this way, BAMA has leveraged its local telephone monopoly into the nascent advanced services market, which the 1996 Act specifically intended to establish as a competitive market. On May 8, 2000, the Hearing Officer issued a Notice (1) designating all parties in D.T.E. 98-57 as interested parties in a newly docketed Phase III and (2) requesting comments from the parties on BAMA's tariff filing. In particular, the Hearing Officer requested that parties comment on whether BAMA's May 5, 2000 filing should be suspended. Pursuant to the Hearing Officer's Notice, Rhythms Links Inc. ("Rhythms"), a party in D.T.E. 98-57, submits these Comments in support of the suspension of BAMA's xDSL and line sharing tariffs.

II. THE DEPARTMENT SHOULD SUSPEND BAMA'S TARIFF

FILING

INTRODUCTION

It is critical that the Department approve and direct BAMA to implement xDSL and line

sharing tariffs which are reasonable and nondiscriminatory. Because BAMA's proposed tariffs do not meet these threshold standards, they should be suspended and investigated. For example, and as explained below, BAMA's proposed tariffs contain excessive charges, unreasonably long line sharing provisioning intervals, inadequate splitter options and incomplete explanations of collocation cable augment intervals. They also fail to provide for line sharing over DLC loops. Allowing BAMA's unreasonable and discriminatory xDSL and line sharing

proposals to become effective, subject to a future investigation, would not further competition

in the advanced services market. Rather, it would further delay and obstruct the competitive

provisioning of DSL services in Massachusetts. The effect would be to deny Massachusetts consumers the substantial benefits that consumers in other states enjoy through a robust advanced services market. The public interest would be better served by the Department's suspending and investigating BAMA's proposed tariffs. During the course of the Department's

investigation, Rhythms will present evidence and argument in support of revised rates, terms and conditions for both the xDSL and line sharing portions of BAMA's proposed tariff.

In this proceeding Rhythms also urges the Department to rule that BAMA must provide xDSL services and line sharing as a matter of state law. The Department has ample authority to

require BAMA to provide these services under G. L. c. 159.

B. LEGAL PRINCIPLES

The Department has previously stated that under G. L. c. 159, §§19, 20, it has "broad discretion in allowing, suspending and investigating proposed changes to tariffs." As a general

rule, the Department suspends proposed tariffs and investigates them as to their propriety before

it permits the tariffs to become effective. (suspension of so-called interconnection tariff). Private Line Service, D.P.U. 1117 (1982) (suspension of private line service rate changes). The Department's general approach ensures that

consumers of the tariffed services receive those services under reasonable and nondiscriminatory rates, terms and conditions.

The Department's general practice of suspending tariffs (especially those which are contested) is a sound one. Permitting a proposed tariff to become effective before its

reasonableness has been established places consumers at risk of receiving services under rates,

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terms and conditions which are unreasonable or discriminatory. Where a tariff filing raises

questions on its face or the Department has been presented with reasons to suspend and

investigate the proposed tariff, a suspension of the tariff by the Department protects the public

from unreasonable or discriminatory rates, terms and conditions.

Moreover, an investigation of a proposed tariff after the fact is problematic. First, any

changes in rates as a result of a post hoc investigation will be prospective in nature. A consumer

may be "overcharged" pending the outcome of the investigation and have no recourse. A

competitor, which must purchase the service from BAMA in order to serve a retail customer,

similarly has no recourse against excessive charges which the Department permits to become

effective without suspension. As a result, BAMA can use its tariff to perpetuate its stranglehold on the advanced services market. Second, given the Department's limited resources and workload, if a proposed tariff is permitted to become effective without suspension, the investigation of its reasonableness may not be completed within a six month period, thus exposing ratepayers to unreasonable or discriminatory rates, terms and conditions for an indeterminate time. Third, if proposed tariffs are not suspended, consumers are subject to significant discontinuity resulting from having to take service under one set of terms and conditions and then having to take service under another set of terms and conditions, all within a relatively short time frame. Finally, once a tariff is permitted to become effective, the Department may be biased toward approval, thereby shifting the burden of proof from the tariff proponent to parties which called the tariff into question.

The limited extent to which the Department has failed to exercise its suspension power over a tariff in need of investigation demonstrates the important role which the suspension power fulfills in guarding the public interest. Only on the rarest of occasions has the Department allowed a tariff to become effective and conducted its investigation as to the reasonableness of the tariff afterward. Unlike the present case, these situations primarily involved price cap compliance tariffs which included overall rate reductions for consumers and the application of a previously approved price cap formula to historical data. No cost studies were involved. In another situation, the Department allowed an amendment to an existing tariff to become effective without suspension and prior to its investigation where the amendment did not contain any specific rates and its subsequent investigation was expected to involve written comments only. That situation clearly does not pertain in this case. Even in the context of price cap filings, the Department has refused to put into effect before an investigation a portion of the filing which raised substantial questions, thus reflecting its general policy in favor of suspension before investigation.

C. BAMA'S PROPOSED XDSL AND LINE SHARING TARIFFS
WARRANT SUSPENSION AND INVESTIGATION

1. The Proposed Tariff Is Distinguishable From the Limited Circumstances in Which the Department has Permitted a Tariff to Become Effective in Advance of its Investigation

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Under any reasoned application of the Department's standards concerning suspension, BAMA's proposed xDSL and line sharing tariffs should be suspended pending investigation.

Permitting these tariffs to become effective without suspension would be contrary to the public

interest. None of the circumstances under which the Department has permitted tariffs to become

effective without suspension exist here. Unlike BAMA's price cap compliance filings, this tariff

filing does not provide for overall rate decreases. Moreover, the present filing by BAMA has not

been made pursuant to any reviewable formula pre-approved by the Department. Rather, the

proposed tariff involves new charges based upon cursory cost data which needs to be subjected

to discovery and scrutinized closely. Furthermore, BAMA's proposed tariffs would establish

new, detailed terms and conditions with an immediate impact upon carriers and retail

consumers. Similarly, the proposed terms and conditions were not expressly ordered by the Department after a review of specific terms and conditions in its Tariff 17 Order, such that a review can be conducted without hearings and within 30 days. Indeed, BAMA's line sharing proposal was not even an issue in the Tariff 17 investigation and therefore does not represent a compliance filing.

The need for suspension is further demonstrated from the face of BAMA's submission. BAMA has not provided any testimony, narrative, cost study or other information which would support even a tentative judgment that the proposed tariffs should become effective prior to an

investigation. BAMA's present filing contrasts with its comprehensive price cap compliance

filings, in which BAMA has demonstrated prima facie compliance with the Department's price

cap formula. BAMA's proposed charges are accompanied by only summary calculations and

bare bones workpapers. The filing does not include detailed source documentation or other

backup which must be reviewed in order to determine the reasonableness of proposed rates. In

contrast to the price cap and AT&T exceptions to its general suspension policy, the very

reasonableness of BAMA's proposed tariffs depends upon a fact intensive investigation of cost

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studies and discriminatory and unreasonable effects of terms and conditions. BAMA has not

provided the Department with substantial evidence to warrant allowing its proposed tariffs to go

into effect prior to a suspension and full investigation.

The importance of fair, efficient and non-discriminatory xDSL and line sharing offerings to Massachusetts businesses and residents demands that the Department insure that the prices, terms and conditions under which BAMA offers these arrangements do not discourage or undermine competitive entry into the advanced services market. However, by permitting BAMA's proposed tariff to become effective without suspension, the Department would be aiding BAMA's effort to thwart the public policy goal of encouraging-through dynamic competitive market forces-widespread provision of advanced telecommunications services. Suspension of BAMA's proposed tariff is needed in order to ensure that the manner in which the Department resolves issues related to rates, terms and conditions for xDSL and line sharing does not adversely affect the ability of new entrants to compete with BAMA, especially with respect to residential and small business customers.

2. Numerous Issues Require a Full Investigation Before DSL and Line Sharing Tariffs Become Effective

Rhythms maintains that because there are significant problems with BAMA's proposed tariff, the Department should suspend the tariff pending investigation. As explained below, the problems with BAMA's tariff range from unsupported rates to unreasonably restrictive terms and conditions for BAMA's line sharing and xDSL loop offerings. The following list of issues represents a sample of some of the problems with BAMA's tariff and is not an exhaustive account of all of the tariff provisions that should be investigated to ensure that BAMA's xDSL and line sharing wholesale offerings are consistent with its obligations.

a. Rates

First, as the FCC has found and as the Department is well aware, a service offering is

not really available-although tariffed-if it is priced at such unreasonably high levels that no

competitor taking the service would be able to compete. BAMA's proposed rates are patently

excessive.

Faced with similar xDSL service offerings, the New York Public Service Commission rolled back Bell Atlantic-New York's xDSL rates by 70 percent, pending a comprehensive

examination of its costs. Allowing BAMA's excessive xDSL rates to become effective-without

the prospect of any true-up after investigation-would not promote the development of DSL

service competition because competitors purchasing under BAMA's tariff would not be able to

compete.

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With regard to line sharing rates, Rhythms maintains that the appropriate recurring charge for the high frequency portion of a loop must be priced in accordance with the 1996 Act's cost-based pricing requirement. According to the FCC, it is "reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing xDSL on a loop already in use for voice services." Thus, BAMA's cost of the loop to provide DSL services is the best evidence of the cost actually incurred by the loop for addition of those services. BAMA has publicly stated that the use of the data channel of an existing loop does not create additional incremental cost burden to that loop. In other words, BAMA has assigned a loop cost of \$0.00 to the aggregate cost of providing retail DSL services. BAMA's determination in this regard presents the best evidence that the addition of data services to existing copper voice loops does not create or cause additional incremental cost to the loop.

Therefore, the rate for the high frequency portion of the loop should be set at \$0.00. However, BAMA's proposed tariff does not explicitly state whether it intends to apply a recurring loop charge for the high bandwidth portion of a shared line. BAMA's tariff should be revised to explicitly state that no recurring charges apply to the high bandwidth portion of a shared line.

b. Provisioning intervals

BAMA's proposed tariff contains an installation interval of 6 business days for line sharing involving 1-9 links. This interval is unreasonable and discriminatory. The provisioning interval for line sharing should be substantially shorter than the interval for a standard xDSL capable loop because BAMA has already provisioned the loop used for line sharing. BAMA should be required to provision line sharing within 3 business days during the first 3 months in which it is providing line sharing, within 2 business days during the next 3 months, and within 1 business day thereafter. If the CLEC requests de-conditioning of the line sharing UNE, the provisioning and installation interval should be extended by an additional 2 business days.

c. Splitter options

BAMA should be required to offer CLECs a menu of options for splitter ownership and location. CLECs should be able to choose from the following options on a central office by central office basis: (1) the CLEC purchases and owns the splitter and places it in the CLEC's collocation arrangement; (2) the CLEC purchases and provides the splitter, or specifies the splitter for BAMA to obtain, and chooses to have the splitter placed in a common area BAMA's serving wire center to which the CLEC has access; and (3) BAMA owns and obtains the splitter and locates it in an area in the serving wire center to which the CLEC does not have access (e.g., on or adjacent to the frame).

BAMA's proposed tariff does not make all of these options available to CLECs. Only two of these options have been offered. See, Tariff Filing, Part E, Section 2.5.1.B.

d. Where BAMA owns the splitter it should provide
splitter functionality to CLECs on a line at a time, card
at a time and/or shelf at a time

BAMA should be required to provide splitter functionality to CLECs on a line at a time,

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card at a time and dedicated splitter ("shelf") basis. However, BAMA's proposed line sharing

tariff does not afford these options. The Department should require BAMA to make these splitter options available to facilitate the competitive provisioning of advanced services. CLECs should not be forced to deal with BAMA's unreasonable tariff proposal (incurring delays and costs) only to later obtain (with additional costs and delays) the line sharing arrangement that they wanted in the first place. For this reason, line sharing can be provisioned in a more timely and efficient manner if BAMA's tariff is suspended and BAMA is required to revise that tariff prior to its implementation.

e. Collocation cable augments to provide line sharing should be made available within a 30 day interval

Installation of tie cables is a simple task that ILECs already perform. Because the FCC's

Line Sharing Order requires ILECs to make line sharing available by a date certain, ILECs

should be ready to install tie cables and splitters necessary for line sharing on a prompt basis and in bulk. Installation of tie cables can be done efficiently and quickly at any particular serving wire center, making a 30-day installation interval quite achievable. It is unclear from BAMA what, if any, interval it is proposing. It is extremely important that this interval be made explicit.

f. BAMA's tariff fails to provide for line sharing over DLC loops

BAMA's proposed line sharing tariff fails to include the provision of line sharing over DLC loops. It is technically feasible for BAMA to provide line sharing over both "home run" copper loops as well as loops that traverse fiber fed DLC systems. Parity demands that BAMA enable CLECs to utilize line sharing on fiber fed DLC loops.

g. Conditioning charges

BAMA's tariff includes rates, terms and conditions for digital designed links ("DDL"), conditioned xDSL loops. Through this offering, BAMA proposes to charge CLECs for removal of devices that interfere with the provisioning of DSL services. These devices, however, would not appear in a forward-looking, efficient and least cost network. Therefore, BAMA proposed conditioning charges are inconsistent with its pricing obligations and should be removed.

3. The Public Interest is Served by Suspension

The Department should reject the notion that the public interest would be served by

permitting BAMA's seriously flawed DSL and line sharing proposals to become effective before a comprehensive investigation. Given the unreasonableness of BAMA's proposed tariffs, DSL and line sharing would be available in name only. CLECs would be forced to absorb excessive charges without any recourse against BAMA, and would be forced to endure excessive provisioning delays. It is more important that the Department "get DSL right" rather than rush an unreasonable tariff into effect. The Department took this approach in dealing with BAMA's proposed new collocation and EEL arrangements in suspending BAMA's Tariff 17 filing. It should follow the same approach in dealing with DSL and line sharing services. Suspension and investigation makes sense for the further reason that the Department may be able to benefit from the outcome of extensive proceedings which have been conducted in New York. Those proceedings may be instructive in reviewing these issues within the six month time deadline for investigating tariffs.

III. CONCLUSION

For the reasons stated above, the Department should suspend BAMA's proposed xDSL and line sharing tariffs pending investigation.

Respectfully submitted,

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